

§ 488.440 Civil money penalties: Effective date and duration of penalty.

(a)(1) The per day civil money penalty may start accruing as early as the date that the facility was first out of compliance, as determined by CMS or the State.

(2) A civil money penalty for each instance of noncompliance is imposed in a specific amount for that particular deficiency.

(b) The per day civil money penalty is computed and collectible, as specified in §§ 488.432 and 488.442, for the number of days of noncompliance until the date the facility achieves substantial compliance, or, if applicable, the date of termination when—

(1) CMS's or the State's decision of noncompliance is upheld after a final administrative decision;

(2) The facility waives its right to a hearing in accordance with § 488.436; or

(3) The time for requesting a hearing has expired and CMS or the State has not received a hearing request from the facility.

(c) The entire penalty, whether imposed on a per day or per instance basis, is due and collectible as specified in the notice sent to the provider under paragraphs (d) and (e) of this section.

(d)(1) When a civil money penalty is imposed on a per day basis and the facility achieves substantial compliance, CMS does or the State must send a separate notice to the facility containing the following information:

(i) The amount of penalty per day.

(ii) The number of days involved.

(iii) The total amount due.

(iv) The due date of the penalty.

(v) The rate of interest assessed on the unpaid balance beginning on the due date, as provided in § 488.442.

(2) When a civil money penalty is imposed for an instance of noncompliance, CMS does or the State must send a separate notice to the facility containing the following information:

(i) The amount of the penalty.

(ii) The total amount due.

(iii) The due date of the penalty.

(iv) The rate of interest assessed on the unpaid balance beginning on the due date, as provided in § 488.442.

(e) In the case of a facility for which the provider agreement has been terminated and on which a civil money pen-

alty was imposed on a per day basis, CMS does or the State must send this penalty information after the—

(1) Final administrative decision is made;

(2) Facility has waived its right to a hearing in accordance with § 488.436; or

(3) Time for requesting a hearing has expired and CMS or the state has not received a hearing request from the facility.

(f) *Accrual of penalties when there is no immediate jeopardy.* (1) In the case of noncompliance that does not pose immediate jeopardy, the daily accrual of per day civil money penalties is imposed for the days of noncompliance prior to the notice specified in § 488.434 and an additional period of no longer than 6 months following the last day of the survey.

(2) After the period specified in paragraph (f)(1) of this section, if the facility has not achieved substantial compliance, CMS terminates the provider agreement and the State may terminate the provider agreement.

(g)(1) In a case when per day civil money penalties are imposed, when a facility has deficiencies that pose immediate jeopardy, CMS does or the State must terminate the provider agreement within 23 calendar days after the last day of the survey if the immediate jeopardy remains.

(2) The accrual of the civil money penalty imposed on a per day basis stops on the day the provider agreement is terminated.

(h)(1) If an on-site revisit is necessary to confirm substantial compliance and the provider can supply documentation acceptable to CMS or the State agency that substantial compliance was achieved on a date preceding the revisit, penalties imposed on a per day basis only accrue until that date of correction for which there is written credible evidence.

(2) If an on-site revisit is not necessary to confirm substantial compliance, penalties imposed on a per day basis only accrue until the date of correction for which CMS or the State receives and accepts written credible evidence.

[59 FR 56243, Nov. 10, 1994, as amended at 64 FR 13361, Mar. 18, 1999]